

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAFAEL ROJAS-REYES,  
Petitioner,  
v.  
WARDEN DOERER,  
Respondent.

Case No. 1:21-cv-01064-HBK (HC)  
OPINION AND ORDER GRANTING  
RESPONDENT'S MOTION TO DISMISS  
AND DENYING PETITION WITH  
PREJUDICE<sup>1</sup>

(Doc. No. 12)

Petitioner Rafael Rojas-Reyes, a federal prisoner in the custody of the Bureau of Prisons (“BOP”), has pending a pro se petition for writ of habeas corpus filed under 28 U.S.C. § 2241 on June 30, 2021. (Doc. No. 1, “Petition”). The Petition claims insufficient illicit drug evidence in connection with his disciplinary proceeding held at United States Penitentiary (“USP”) Atwater. (*Id.* at 6).<sup>2</sup> In response, on November 29, 2021, Respondent filed a Motion to Dismiss with Appendix. (Doc. Nos. 12, 12-1). On December 27, 2021, Petitioner filed a Reply. (Doc. No. 14). For the reasons set forth more fully below, the Court grants Respondent’s Motion to Dismiss and denies the Petition with prejudice.

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<sup>1</sup> Both parties have consented to the jurisdiction of a magistrate judge in accordance with 28 U.S.C. §636(c)(1). (Doc. No. 13).

<sup>2</sup> The Court cites to the page number as it appears on the Court’s Case Management/Electronic Case Files system.

## I. BACKGROUND

2 Petitioner is serving multiple terms of imprisonment following his conviction after a jury  
3 trial in the United States District Court for the Southern District of Indiana (“SDIN”). *See United*  
4 *States v. Rojas-Reyes et al.*, No. 1:16-cr-001230-TWP-MJD-1, Crim. Doc. Nos. 669, 798.<sup>3</sup>  
5 Petitioner was convicted on the following six counts: conspiracy to distribute 500 grams or more  
6 of methamphetamine and 5 kilos of cocaine (Count 1 – violation of 21 U.S.C. § 841(A)(1), 846),  
7 operating a continuing criminal enterprise (Count 3 – violation of 21 U.S.C. § 848(a) and (b)(1)),  
8 conspiracy to launder monetary instruments (Count 4 – violation of 18 U.S.C. § 1956(h)),  
9 distribution of 500 grams or more of methamphetamine (Count 5 – violation of 21 U.S.C. §  
10 841(a)(1)), distribution of 50 grams or more of methamphetamine (Count 6 – violation of 21  
11 U.S.C. § 841(a)(1)), and distribution of 50 grams or more of methamphetamine (Count 8 –  
12 violation of 21 U.S.C. 841(a)(1)). (*Id.*). Petitioner received four concurrent life sentences for  
13 Counts 1, 3, 5, and 8, in addition to concurrent sentences of 240 months in prison for Count 4 and  
14 480 months in prison for Count 6. (*Id.*). The Seventh Circuit Court of Appeals affirmed  
15 Petitioner’s convictions and sentences. *See United States v. Castro-Aguirre*, 983 F.3d 927, 943  
16 (7th Cir. 2020).

17 According to the record before the Court, a visual search of Petitioner’s cell was  
18 conducted on July 23, 2020, during which correctional officers identified 12 large strips of  
19 cardstock and 25 smaller strips inside Petitioner’s belt. (Doc. No. 12-1 at 17). Immediately  
20 following the discovery of the strips, the officer submitted them to three tests using a Narcotics  
21 Identification Kit (“NIK”). (*Id.*). NIK test A, by color change, yielded a positive test result for  
22 the presence of Opium Alkaloids. (*Id.*). The subsequent NIK test U, again by color change,  
23 confirmed the positive illicit drug presence on the strips. (*Id.*). The final NIK test K indicated a  
24 positive result for heroin. (*Id.*).

25 On August 3, 2020, Petitioner received a rewritten incident report (“IR”)<sup>4</sup> for possession

<sup>3</sup> The undersigned cites to the record in Petitioner's underlying SDIN criminal case as "Crim. Doc. No. \_\_\_\_".

<sup>28</sup><sup>4</sup> The record includes an “advisement of incident report delays” to ensure the inmate’s due process rights were not violated. The advisement indicated the UDC hearing would not be conducted within 5 workdays

1 of illicit drugs in a BOP facility in violation of BOP Code 113. (*Id.* at 4, Doc. No. 12-1 at 17-18).  
2 After Petitioner was provided with the IR, the matter was referred to Petitioner's Unit Discipline  
3 Committee ("UDC"), and the UDC upheld the charge and referred for a Discipline Hearing  
4 Officer ("DHO") Report. (Doc. No. 12-1 at 21, 33). During this process, Petitioner was advised  
5 of his rights and confirmed his receipt of the IR. (Doc. No. 12-1 at 28-30).

6 On August 7, 2020, a disciplinary hearing was convened via teleconference. (Doc. No.  
7 12-1 at 32-34). Petitioner appeared at the hearing, confirmed he received a copy of the IR,  
8 elected not to call witnesses, elected not to have a staff representative present, and elected not to  
9 submit any documentary evidence. (*Id.*). The hearing officer found Petitioner guilty of  
10 possessing illicit drugs in a BOP facility based on the following evidence: the officer's written  
11 report; the three NIK tests which confirmed the presence of heroin on the strips in petitioner's  
12 possession; the NIK test flow chart confirming the reporting officer used the appropriate test  
13 sequence; evidence photos; and Petitioner's election to forgo making a statement. (*Id.*).  
14 Petitioner was sanctioned to 45 days of disciplinary segregation (30 of which were suspended  
15 with clear conduct), loss of commissary privileges for 180 days, loss of phone privileges for 210  
16 says (180 of which were suspended with clear conduct), loss of visitation privileges for 365 days,  
17 loss of MP3 player and radio privileges for 90 days, and property impounded for 30 days. (*Id.* at  
18 33-34).

19 Petitioner filed a prison appeal contending that the NIK test was invalidly conducted, and  
20 the positive results were not confirmed by laboratory testing. (Doc. No. 12-1 at 15). He requested  
21 the IR be "expunged" and the sanctions withdrawn. (*Id.*). The Regional Director determined  
22 Petitioner's allegations were meritless; specifically finding that inmates do not have a right to  
23 outside forensic testing and that the record reflected the staff followed proper testing procedures.  
24 (*Id.* at 14). Petitioner attaches a BP-11 Central Office administrative remedy appeal; however,  
25 Respondent filed a declaration attesting that BOP records do not reflect that this request was  
26 submitted or received. (*Id.* at 3-4, 11-12; Doc. No. 1 at 10).

27 \_\_\_\_\_  
28 of the reporting officer becoming aware of the incident because, in part, the DHO requested a rewrite of  
the incident report. (Doc. No. 1 at 14, 16).

1 Petitioner argues his due process rights were violated because the strips in his possession  
 2 were not properly tested, resulting in an invalid, false positive result. (Doc. No. 1 at 6-7). As  
 3 relief, Petitioner seeks the removal of the incident report from his record and restoration of his  
 4 privileges. (*Id.* at 7). Respondent argues the Court lacks jurisdiction because no liberty interest is  
 5 involved, Petitioner failed to exhaust all administrative remedies, and regardless, Plaintiff's  
 6 insufficiency of the evidence argument is without merit because the disciplinary decision was  
 7 supported by "some evidence" pursuant to *Superintendent, Mass. Correctional Institution v. Hill*,  
 8 472 U.S. 445, 454 (1985), including three separate positive NIK tests. (Doc. No. 12 at 1, 4-6).

## 9 **II. APPLICABLE LAW**

10 Under Rule 4, if a petition is not dismissed at screening, the judge "must order the  
 11 respondent to file an answer, motion, or other response" to the petition. R. Governing 2254 Cases  
 12 4. The Advisory Committee Notes to Rule 4 state that "the judge may want to authorize the  
 13 respondent to make a motion to dismiss based upon information furnished by respondent." A  
 14 motion to dismiss a petition for writ of habeas corpus is construed as a request for the court to  
 15 dismiss under Rule 4 of the Rules Governing Section 2254 Cases. *O'Bremski v. Maass*, 915 F.2d  
 16 418, 420 (9th Cir. 1990). Under Rule 4, a district court must dismiss a habeas petition if it  
 17 "plainly appears" that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d  
 18 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

19 A challenge to the execution of a sentence by a federal prisoner, as opposed to the  
 20 imposition of a sentence, is properly brought under 28 U.S.C. § 2241. *Hernandez v. Campbell*,  
 21 204 F.3d 861, 864 (9th Cir. 2000) (*per curiam*). When a petitioner challenges  
 22 disciplinary findings, habeas corpus jurisdiction is available under § 2241 when a petitioner  
 23 claims: (1) he lost good time credits<sup>5</sup> without due process of law; (2) he was subject to greater  
 24 restrictions of liberty, such as disciplinary segregation, without due process of law; or (3)

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25  
 26 <sup>5</sup> However, in dicta, the Supreme Court, stated the award of good time credit by the BOP under 18 U.S.C.  
 27 § 3624(b) "does not affect the length of a court-imposed sentence; rather it is an administrative reward to  
 28 provide an incentive for prisoners to 'compl[y] with institutional disciplinary regulations.'" *Pepper v.  
 United States*, 562 U.S. 476, 502, n. 14 (2011) (internal quotations and citations omitted).

1 expungement of a disciplinary finding from his record is likely to accelerate his eligibility for  
2 parole. *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989), overruled on other grounds  
3 by *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016); see also *Fiorito v. Entzel*, 829 F. App'x 192,  
4 193 (9th Cir. 2020) (jurisdiction exists under § 2241 where the petitioner claims he has  
5 been “subjected to greater restrictions of his liberty, such as disciplinary segregation, without due  
6 process of law”).

7 Additionally, “[a] case becomes moot when it no longer satisfies the case-or-controversy  
8 requirement of Article III, section 2, of the Constitution.” *U.S. v. Verdin*, 243 F.3d 1174, 1177  
9 (9th Cir. 2001) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Thus, to maintain a viable claim,  
10 a petitioner must continue to have a personal stake in the outcome of the suit throughout “all  
11 stages of federal judicial proceedings.” *Id.* If there is no longer a possibility that a party seeking  
12 relief can obtain relief for his claim, that claim is moot and must be dismissed for lack of  
13 jurisdiction. *See Ruvalcaba v. City of Los Angeles*, 167 F.3d 514, 521 (9th Cir. 1999).

### 14 III. ANALYSIS

15 Petitioner asserts a due process violation on the basis that the disciplinary decision was  
16 not supported by sufficient evidence. (Doc. No. 1 at 5). In addition to the expungement of the  
17 disciplinary action, he seeks restoration of “lost privileges.” (*Id.* at 7). Liberally construed,  
18 Petitioner seeks restorations of various privileges identified above that were imposed after the  
19 disciplinary hearing held on August 12, 2020.

20 Notably, the record reveals that Petitioner is serving multiple life sentences and is  
21 therefore not eligible to earn good time credits, and indeed no loss of good time credit were  
22 included in the sanctions imposed by the disciplinary hearing officer. (Doc. No. 12 at 5; Doc. No.  
23 12-1 at 7-9, 33-34). Admittedly, certain restrictions to liberty, including disciplinary segregation  
24 trigger § 2241 habeas jurisdiction. But here, the Court need not analyze, whether any of the  
25 restrictions, other than disciplinary segregation, which were imposed affected Petitioner’s liberty  
26 to trigger habeas jurisdiction because all the imposed restrictions have since expired. In other  
27 words, because Petitioner has long-since completed each of the sanctions, including the  
28 disciplinary segregation, any claim based upon the loss of his privileges is moot. Thus, habeas

1 relief is not available to Petitioner. *See Watson v. Milusnic*, 2020 WL 6647739, at \*2 (C.D. Cal.  
2 Sept. 28, 2020) (finding habeas relief would not be available based on a claim that petitioner lost  
3 good time credits because he did not lose any good time credits, nor would it be available based  
4 on subjection to disciplinary segregation because he already completed his disciplinary  
5 segregation); *Jeburk v. Milusnic*, 2019 WL 5089202, at \*2 (C.D. Cal. July 12, 2019)  
6 (“Petitioner’s punishment [of disciplinary segregation] has been completed and habeas relief is  
7 unavailable.”); *see also Saunders v. Gutierrez*, 2011 WL 5933292, at \*2 (C.D. Cal. Oct. 17, 2011)  
8 (finding claims not cognizable under § 2241 because disciplinary sanctions consisted only of  
9 temporary placement in disciplinary segregation and temporary loss of commissary and telephone  
10 privileges, and Petitioner is not eligible to earn good conduct time because he has been sentenced  
11 to life imprisonment, “[t]hus, even if the disciplinary findings were expunged, Petitioner’s term of  
12 imprisonment would remain unchanged” and “clearly do not implicate the fact or duration of his  
13 confinement.”).

14 Based on the foregoing, the Petition is subject to dismissal.

15 Accordingly, it is **ORDERED**:

16 1. Respondent’s Motion to Dismiss (Doc. No. 12) is GRANTED.  
17 2. The Petition (Doc. No. 1) is dismissed with prejudice.  
18 3. The Clerk of Court shall enter judgment and close this case.

19  
20 Dated: September 10, 2024

  
21 HELENA M. BARCH-KUCHTA  
22 UNITED STATES MAGISTRATE JUDGE  
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